

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 43 of 2019**

**STATE**

**vs.**

**IFEREMI BUA**

Counsel : Ms. N. Ali with Ms. A. Devi for Prosecution  
Mr. K. Cheng for Defence

Date of Hearing: 1 August 2022

Date of Judgment : 3 August 2022

**JUDGMENT**

1. The accused was charged with one count of Act with Intent to Cause Grievous Harm on the following information.

**COUNT ONE**

**Statement of Offence**

**ACT WITH INTENT TO CAUSE GRIEVOUS HARM: Contrary to Section 255(a) of the Crimes Act of 2009.**

**Particular of Offence**

IFEREMI BUA on the 1<sup>st</sup> day of August, 2018 at Moala, Lau in the Eastern Division, with intent to cause grievous harm to MOSESE TIKOISUVA, unlawfully wounded the said MOSESE TIKOISUVA by striking him with a stick.

2. The accused pleaded not guilty to the charge. At the ensuing trial, the Prosecution presented the evidence of the complainant and the doctor who produced the medical report of the complainant. At the end of the Prosecution case, the accused was put to his defence. Upon

his rights being explained, the accused elected to give evidence under oath. At the end of the Defence case, the Court heard oral submissions from both the counsel. Having carefully considered the evidence presented at the trial and the respective submissions, I now proceed to pronounce my judgment as follows.

3. The Prosecution must prove all the elements of the offence beyond reasonable doubt. That burden never shifts to the accused at any stage of the trial. The accused is presumed innocent until he is proven guilty.

4. The relevant parts of Section 255 (a) of the Crimes Act No 44 of 2009 which defines the offence reads as follows:

A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

(a) unlawfully wounds or does any grievous harm to any person by any means; or

(b) .....

5. Accordingly, the prosecution must prove that the accused intended to do some grievous harm to the complainant and with that intention unlawfully wounded the complainant.

6. The issue of self-defence was raised by the Defence in cross-examination as well as by the accused in his evidence. That particular defence had also been raised at the caution interview whose report was tendered by consent as an agreed document. Once the accused raises the defence of self-defence as he has done in this case, the burden is on the prosecution to prove beyond reasonable doubt that the accused was not acting in self-defence.

7. The defence of self-defence is available as a statutory defence in Fiji and is set out in Section 42 of the Crimes Act which states:

42(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.

(2) A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:

(a) to defend himself or herself or another person, or

(b) - (e) \_ \_ \_

and the conduct is a reasonable response in the circumstances as he or she perceives them.

8. This defence will exonerate an accused person in the event that the prosecution fails to establish beyond reasonable doubt that the conduct of the accused was not a reasonable response to the circumstances as they were perceived by the accused. This is the only basis upon which the use of force in self-defence will negate criminal responsibility for an offence. *Aziz v State* [2015] FJCA 91; AAU112.2011 (13 July 2015)

9. In *The State v Li Jun* (unreported CAV 17 of 2007; 13 October 2008) Sackville J referred to the decision of the High Court of Australia in *Zecevic v DPP* [1987] HCA 26; (1987) 162 CLR 645 at 661 and concluded that there was no inconsistency with the statements made by the Privy Council in *Palmer v The Queen* [1995] 1 AC 482. Sackville J then made the following observations as to the nature of the test for self-defence at common law in paragraph 46:

It is important to appreciate that the test stated in *Zecevic* is not wholly objective. It is the belief of the accused based on the circumstances as he or she perceives them to be, which has to be reasonable. The test is not what a reasonable person in the accused's position would have believed. \_ \_ \_ . It follows that where self-defence is an issue, account must be taken of the personal characteristics of the accused which might affect his appreciation of the gravity of the threat which he faced and as to the reasonableness of his or her response to the threat.

10. In *Aziz v State* [2015] FJCA 91; AAU112.2011 (13 July 2015), at [32] the Court of Appeal took the view that there is no inconsistency between the common law principles of self-defence and Section 42 of the Crimes Act.

11. The defence of self-defence at common law has two limbs. In summary, the first is whether the Defendant genuinely believed that it was necessary to use force to defend himself. The

second is whether the nature and degree of force used was reasonable in the circumstances. It is also elementary that once self-defence has been raised as an issue it is for the prosecution to disprove it to the criminal standard- beyond reasonable doubt.

12. Leaving aside cases of self-induced intoxication, it has long been established that the first limb of the defence involves assessment of subjective considerations. The state of mind and belief of the Defendant is in issue: objective considerations of reasonableness in this context are only relevant as potentially casting light on what the state of mind of the Defendant in truth really was. It thus follows that even if the belief is based upon a mistake or a delusion still, if genuinely held, it can operate to satisfy the first limb of the defence. The second limb, however, unquestionably incorporates (by its requirement of reasonableness) objective considerations. There was considerable debate over the decades as to whether the test for the second limb was solely objective. But latterly it had been clearly decided that is not solely objective: see, for example, *Palmer v R* [1971] AC 814, [1971] 1 All ER 1077, [1971] 2 WLR 831. It is, for example, therefore conventional to direct juries, on the issue of the reasonableness of the force used, not only as to the circumstances in which the Defendant found himself in responding by the use of force (for example a "heat of the moment" situation) but also, in an appropriate case, as to the circumstances in which the Defendant genuinely, albeit mistakenly, believed them to be. See: *Oye v R* [2013] EWCA Crim 1725.

13. Bearing in mind the legal principles discussed above, I now proceed to summarise the evidence led in trial.

#### Case for Prosecution

##### Mosese Tikoisuva (The Complainant)

14. Mosese is a farmer by profession. He testified that, in the year 2018, he was residing at Vadra Village in Moala with his family. On 1<sup>st</sup> day of October, 2018, at around 7 am, he reached his farm at Narukua to do some farming. He was carrying a cane knife with a sharp blade and a woven basket. As soon as he arrived at the farm, he noticed that his cows had already been shifted from where they were. So he decided to go further up.

15. All of a sudden he could see his uncle- Ifercimi Bua peeping behind a huge mango tree, two meters apart. The moment he saw his uncle, he was trying to say 'Iii'. His uncle started beating him with the stick. It was a piece of wood taken from a *vaivai* tree that is used for planting *dalo*. It would be 2 meters long and 3 or 2 inches thick. It had sharp edges.
16. His uncle started beating his knees and then his left hand elbow. His right knee, ribs and his ankles also got beaten. His uncle hit his hand first causing him to drop the knife he was holding onto. Whilst his uncle was hitting him with the *vaivai* stick, he was not holding onto the knife. When his uncle was hitting him with this *vaivai* stick, he fell on the ground on a slope and was trying his best to get up, but he couldn't stand up as his uncle kept on hitting him. When he fell, he was trying to grab some stones or piece of wood to defend himself. As he was trying to grab some stones, he saw his uncle wielding his knife. It was a cane knife with sharp edges. His head got injured from the knife that his uncle was holding on to. He was trying to defend himself from the knife-but got struck with the sharp edge of the knife. When his uncle was swinging his knife towards him, his left hand and his head got injured.
17. He managed to grab a stone and tried to throw the stone at his uncle but he couldn't because blood was coming down on his face from his head. His uncle's one hand was holding onto the *vaivai* stick and the other hand was holding onto the knife. He was seated on the ground as he couldn't stand up. The blood coming down from his head. He slowly took off his t-shirt and tried to wipe off his injured head. When his uncle was hitting him with the *vaivai* stick, his uncle was swearing at him. He thought his uncle was trying to kill him. He used the words "magaitinamu" (your mother's cunt) and also swearing at his dad using the words "caititamamu", (fuck your father).
18. When he was wiping off his face with his t-shirt, his uncle was getting some herbal leaf and tried to use it on the injury. It was painful and he pushed his uncle. He said that his uncle used the *vaivai* stick 5 times on him from a distance of 1 meter.

19. When asked the reason why his uncle wanted to hit him, Mosese said that there was a conflict between them over a cow and his uncle also made an allegation that he had an affair with his wife. His wife used to have her bath at his home and his uncle had a suspicion that he was having an affair with his wife. After a discussion with his uncle on a previous day, he got cleared himself of the allegation.
20. He walked back to the village with injuries and went to the village nurse to get treatments. Then the police came and took him to Naro Health Centre in Moala where he received treatments for 3 weeks. He was medically examined and transferred to Suva for x-rays.
21. Under cross-examination, Mosese said that when he was near the mango tree, his uncle just came from behind the tree and first hit on his right knee and then left elbow, ribs and ankle with the *vaivai* stick while he was still holding on to his knife. He admitted that, at first, there was an argument between them in regards to the allegation of him having an affair with his uncle's wife.
22. He denied that he also swung his knife multiple times at his uncle but he missed each time and it landed on the *vaivai* stick leaving deep marks on the *vaivai* stick from his knife. He denied that his uncle picked up the *vaivai* stick only after he swung his knife. He denied that his uncle actually hit him on the head to make him stop swing the knife at him. He denied that the moment he dropped his knife his uncle dropped his *vaivai* stick and attended to help him with the mile-minute leaves. However, he admitted that his uncle attempted to assist him by applying herbal medication.
23. His statement was recorded by police on the 4<sup>th</sup> of October, 2018. He agreed that in the statement he had told police that "*after that he threatened me with his knife by swinging it in front of me and then he strike (sic) my arm using his knife*". He also agreed having told police that "*I defended myself and we struggle (sic) at each other*". He also agreed that he had never mentioned in his statement to police that his uncle struck his head with a knife and that the only time he had referred to the use of the knife was when he was struck in his arm. He denied

that his uncle picked up the *vaivai* stick to protect himself. He denied that his uncle only hit him with a *vaivai* stick and nothing else.

24. Under re-examination, he denied that he was engaged in a struggle with his uncle. He said he defended himself holding on to his knife and he didn't swing it towards the accused. He confirmed that he had injuries on his rib area, ankle and knees and received his head injury from the knife of his uncle. He received injuries on his hand when he was covering himself.

Doctor Dave Whippy

25. Doctor Whippy had not examined the complainant. He was called by the Prosecution only to tender the medical report (PE.2) prepared by examining doctor Josaia Tiko who is currently abroad.
26. Doctor Whippy said that he was familiar with the work of Doctor Tiko who worked under him. He recognised the medical report prepared by Doctor Tiko on 01<sup>st</sup> of October, 2018, after examining the complainant and tendered it in evidence.
27. Referring to D-12 of the Medical Report, the doctor explained the specific medical findings. Accordingly, there's a deep laceration on patient's left skull 7cm in length and 1.5 cm in depth. In his professional opinion, it could have been caused by being struck by something sharp like a knife. There is a bruise over patient's left posterior lateral forearm with a swelling. There are cuts on patient's third and fourth right fingers. He described a bruise as a collection of blood under the skin, most probably caused by a blunt trauma, caused by a blunt object like a piece of wood. There is a swelling on patient's left hand with tenderness and swelling over his left eye and left leg. A tenderness could be caused by a blunt object. The cuts on third and fourth right finger would have been caused by something sharp.
28. There is an excessive bleeding with approximately more than 200ml of blood loss. According to the professional opinion, the history correctly matched the injuries sustained. Referring to the diagram in Appendix 1, the doctor said that the laceration was on the posterior (back) of

the head. There is bruising noted on the back of the left arm, swollen and tender. The examining doctor had suspected a fracture over the left hand where he found swollen and painful.

29. Under cross-examination, Dr. Whippy agreed that there were no injuries noted on patient's knees either left or right and on ribs or ankles as well. There were injuries noted close to the elbow but not on the elbow. By looking at the deep laceration noted on patient's left scalp, and the other injuries he is unable to say how serious they could be. He agreed that his opinion that there is a possibility of the deep laceration being caused from a sharp force trauma is different from doctor Tiko's observation. He agreed that, according to the professional opinion of doctor Tiko, the only point of sharp object trauma that he noted was the cuts on fingers. He agreed that, according to the report, there is no suggestion of any prolong or extended period of hospitalisation or admission. He agreed that none of the injuries that were noted in the medical report can be classified as 'life threatening'.
  
30. Under re- examination, the doctor said that the patients are kept under observation for 24 hours as a normal protocol just to determine the seriousness of the head injuries and whether there would be signs of any brain injury. According to the report there is nothing to indicate that there was any brain injury as a result of the trauma. He said that excessive bleeding, could be caused by ruptures of the major artery. Most scalp injuries would bleed because there is a lot of blood vessels in that area.

#### Case for Defence

31. Iferemi Bua Bua testified that, in October, 2018, he was residing at Vadra Village in Moala Island with his family. On the 1<sup>st</sup> of October 2018, he woke up at about 5 am and went out to the farm at Narukua. When he reached Narukua, he had to shift the cows from where they were tethered. At that time, he could see Mosese coming towards him. Mosese was holding his knife and his woven basket. There was an exchange of words between them about the cow. Mosese then swung his knife towards him. It was a cane knife used for weeding. When Mosese was swinging that knife, he came running to pick up a wood so that he could defend himself.



32. Mosese swung that knife 5 times. It all landed on the wood that he was using to defend himself with. He was trying to defend himself and trying to slow Mosese down. At the time Mosese struck with his own knife. It chipped the wood that he was holding on to defend and it slipped and hit Mosese on his head. When Mosese started swinging his knife, he was worried because if he got struck with that knife, he would have been seriously injured. He cared for his safety and that is why he was doing that to defend himself with the wood. As Mosese struck his knife he was putting up that wood to defend himself. He defended 5 times with the wood. He didn't use the wood on Mosese. He only used the wood to slow Mosese down. While defending, he could see that Mosese was injured. Then he told Mosese to sit down. He took the knife from Mosese and threw it away. He took the herbal medicine leaves and used it on Mosese's injury. He told Mosese to come to the village to bring some food.
33. Under cross- examination, he agreed that he was agitated with Mosese over the allegation of extra marital affair of his wife with Mosese. He agreed that when Mosese swung the knife he ran away a distance of about 3 meters to pick a wood. He said that he didn't ran away to save himself because he knew if he run, Mosese would still come after him because he was wearing gum boots at that time. He agreed that it was he that had approached Mosese and Mosese did not approach him first. He denied he had approached Mosese with a cane knife and vaivai stick and that he struck Mosese several times.
34. He admitted the answer to question 19 of his caution interview, which he read
- Q 19 : Did you hit him with the vaivai stick?*
- Ans : Yes, I hit him with the stick so that his knife can fell off from his hand.*
35. He admitted that he had hit Mosese more than once and that he only stopped hitting when he saw Mosese bleeding heavily. He admitted that he put herbal medication on Mosese because he knew that he had caused injuries to him.

Analysis

36. The version of the Prosecution is that the accused struck the complainant with a *vaivai* stick and a knife with the intention to do some grievous harm and thereby unlawfully wounded the complainant. There is no dispute that the complainant had received the injuries as noted in the medical report. The accused denies those injuries were caused by him and that he had ever used a knife. At the same time he was raising the defence of self-defence.
37. There is no dispute that the accused is related to the complainant and no dispute as to the identity of the accused. The Prosecution must prove beyond reasonable doubt that the accused intended to cause grievous harm to the complainant and that the complainant received injuries as a result of an unlawful conduct of the accused. If the version of the Prosecution is rejected or the court has some doubt about the version of the prosecution, the Court should then proceed to consider defence of self-defence. The accused has no burden to prove that he was acting in self-defence. If the Court finds that the accused had acted in self-defence, then the offence is not made out because the act of the accused is deemed to be lawful. The overall burden is on the Prosecution to prove that the accused was not acting in self-defence. Therefore, in the first analysis, I will deal with the case for Prosecution to see if it is acceptable.
38. The Prosecution substantially relies of the evidence of the complainant and the medical evidence was adduced to support the version of the complainant. In my opinion, the complainant was straightforward in his evidence and his evidence is credible and reliable. I proceed to give reasons as to why I came to such a conclusion.
39. It is the evidence of the complainant that the accused was hiding behind a mango tree and started beating him with a *vaivai* stick and then struck with a cane knife. It is admitted that there had been an exchange of words before the alleged attack. According to the complainant, the exchange was over a cow and also over an alleged extra marital affair him having with the wife of the accused. Under cross-examination, accused too agreed that he was agitated with the complainant over the allegation of the extra marital affair with his wife. However, in his evidence-in-chief, the accused did not disclose that the extra marital affair was one of the subjects of the exchange of words, although in his caution interview, it was the sole subject that led to the exchange of words. This evidence suggests that the accused had had a strong

motive to initiate an attack on the complainant and with that motive in mind he had come to the location with a malicious intent.

40. The Defence Counsel contended that the version of the complainant should be rejected mainly on two grounds. He says that the evidence of the complainant is not consistent with his previous statement made to police and also with the medical report.

41. The complainant had recorded his statement on the 4th of October 2018, four days after the incident. Although the complainant had been taken to the Naroj Health Centre on the 1<sup>st</sup> of October 2018 by the police officers soon after the incident, no statement had been recorded on that day. It can reasonably be assumed that the complainant was not in a position to record a statement due to his injuries. According to the complainant, he had received treatments for three weeks. Although Dr. Whippy said that there is nothing in the report suggestive of any prolong or extended period of hospitalization or admission, he had never seen the complainant and, therefore, is not in a position to tell for how long the complainant had received treatments at the Health Centre. The statement itself indicates that it has been recorded at the hospital. In such a situation, it is possible that the complainant omitted to give an exact account of the injuries and the manner in which each of those injuries was inflicted. Therefore, the so called inconsistencies should be viewed in that context.

42. On the other hand, the inconsistencies highlighted by the Defence cannot be viewed as martial. The complainant agreed that in the statement he had told police that "*after that he threatened me with his knife by swinging it in front of me and then he strike (sic) my arm using his knife*". He agreed having told police that "*I defended myself and we struggle (sic) at each other*". He also agreed that he had never mentioned in his statement to police that his uncle struck his head with a knife and that the only time he had referred to the use of the knife was when he was struck in his arm. The position of the Defence is that the accused never used a knife but a *vaivai* stick. In the alleged two competing statements, there is no inconsistency as far as the weapon used to inflict the injury is concerned but only as to the place where it had landed. Both his evidence and the statement speak of a knife. According to the complainant, by the time he received the injuries from the knife, he had already been beaten up with a *vaivai* stick. In such a scenario it is possible that he was confused as to the exact place the knife had landed.

On the other hand, it can be argued that there is no inconsistency at all because there is clear medical evidence that a sharp object had been used to inflict the cuts on his third and fourth fingers which are technically parts of the arm. As to the 'struggle at each other', I do not see any inconsistency. The complainant was speaking about a 'struggle' between him and his uncle throughout his evidence.

43. Now I turn to the alleged inconsistencies between the evidence of the complainant and the medical report. The complainant said in his examination-in-chief that his uncle started beating his knees and then his left hand elbow, ribs and his ankles. In cross-examination he confirmed that his uncle first hit on his right knee and then left elbow, ribs and ankle with the *vaivai* stick. He never said that he had injuries on any of those places. All the significant injuries which he testified to are reflected in the medical report. Therefore, there is no material inconsistency between the medical evidence and complainant's evidence in court.
44. The Defence strongly argues that the accused never used a knife on the complainant. The accused in his caution interview and evidence maintained the same stance. The complainant on the other hand maintained that the laceration on his posterior head and the cuts on the fingers were deliberately inflicted from the knife the accused. Dr. Whippy was of the opinion that the laceration to the head would have been caused by a sharp object like a knife. However, he admitted that his opinion does not match the professional opinion of the examining doctor, Dr. Tiko whose opinion was that '*all injuries evident of blunt object traumas*'. It appears that Dr. Tiko's opinion that '*all injuries evident of blunt object traumas*' is not consistent with his own opinion that '*cut on the fingers evident of sharp object traumas*'. Although the accused in his caution interview maintained that he only used a stick, he has admitted in his answer to Q 27 that *his knife and vaivai stick have been taken by the police*. If a knife had never been used and the police had no evidence suggestive of a use of a knife, they would not have taken his knife into custody as an exhibit. The strong supporting evidence adduced by the Prosecution compels me to accept the evidence of the complainant that the accused used his knife to inflict the laceration on complainant's head and the two fingers.
45. I agree with the Counsel for Defence that the non-production of the knife and the stick as exhibits at the trial created a lacuna in the Prosecution case. However, in view of the strong

evidence in this case suggesting a use of a knife and a stick to inflict the injuries to the complainant, non-production of those objects as exhibits at the trial did not in my opinion have a fatal effect on the case for the Prosecution. The accused admits that a *vaivai* stick was in fact used, albeit to defend himself. He has admitted in the caution statement that his knife was taken into custody by the police along with the *vaivai* stick. Doctor Whippy took the view that a sharp object has been used to inflict the laceration on the head and also the cuts on the fingers. Examining doctor Tiko has opined that the cuts on the fingers evident of sharp object traumas. The evidence on the use of a knife and a *vaivai* stick is overwhelming.

46. The Defence Counsel seems to suggest that in view of the medical evidence supportive of the Defence theory that the complainant received no "life threatening" or serious injuries, the accused cannot be found guilty of the offence of Act with Intent to Cause Grievous Harm. I do not agree. To bring about a conviction, what matters is not the degree of the seriousness of the injury or injuries resulted from the conduct of the accused but the intention of the accused at the time of the offending. The relevant question to be asked is whether the accused intended to cause grievous harm to the complainant when he was engaged in that particular conduct.

47. In *Naosara v State* [2007] FJHC 71; HAA047J.07S (2 November 2007) the Appellant was charged with Act with Intent to Cause Grievous Bodily Harm. During an operation the Appellant fled from a house and struck a corporal with a kitchen knife causing him injuries. He swore at the corporal and threatened to kill him. The medical report showed that the corporal had a 1-2cm cut on his chin and abrasions on the neck and jaw.

Shameem J observed:

Although greater analysis was called for after the review of the evidence, the issue was essentially a simple one. Did the Appellant strike at Cpl. Matou with a knife causing an injury and did he intend serious harm? Anyone who uses a knife on another in an aggressive way must be assumed to intend serious harm. That is the consequence of using potentially lethal weapons. (*emphasis added*)

48. It is therefore clear that, when a lethal weapon has been used to cause the wounding, whether or not the act or use of that weapon achieved the desired result or wound, the specific intent to cause grievous harm could be inferred from the use of such weapon.

49. A careful consideration of the evidence led in trial point to an irresistible inference that the accused intended to cause grievous harm to the complainant. The accused used a cane knife, a lethal weapon. It was struck on complainant's posterior scalp which is a vulnerable part of his body. The laceration on the left scalp was somewhat deep and long although there was no brain damage. Even assuming that a knife was never used, it appears that the *viavai* stick that has been used potentially could cause severe bodily harm. According to the complainant, it was new, long and thick *vaivai* stick with sharp edges generally used to plant *dalo*. The complainant said his face was covered with blood and, according to the medical report, there had been excessive bleeding. The laceration on the posterior head and other injuries all over the body suggest that the accused intended to cause grievous harm to the complainant.
50. Did the post criminal conduct of the accused negate such an intention? There is no dispute that the accused applied herbal medicine on the wound when the complainant was bleeding from his head. The Defence Counsel suggested that the complainant's conduct after the attack negates an intention to cause grievous harm. If this evidence was available in a murder trial the court might take accused's conduct into account to reduce the charge to one of manslaughter. However, when the specific intention is manifest from the conduct of the accused as at the time of the offence, a post criminal conduct should not be used to reduce the charge in this case. In my opinion, the intention of the accused in this case should be gauged in relation to the time of the offence and not on the basis of the post criminal conduct. His post criminal conduct should definitely be considered at the sentencing stage as evidence suggestive of remorse.
51. The accused elected to give evidence under oath, although he has no burden to prove anything in this case. Unfortunately, his evidence is not appealing to me especially because it is martially inconsistent with his caution statement which was tendered in evidence as an agreed fact. In his evidence the complainant maintained that he was unarmed when he first saw the complainant and he picked the stick only when the complainant started swinging the cane knife at him. He denied that he had approached Mosese with a *vaivai* stick and that he struck Mosese several times with it. He maintained in his examination-in-chief that he was putting up the stick to defend himself. He defended 5 times with the wood but never used it on Mosese. Quite contrast to his evidence, the accused, in his caution statement admitted that he hit 5 times with the stick. After the exchange of words, the first thing he did was to ask the

complainant to throw away his knife. Failing of which he started hitting the complainant. These strikes were directed at the hand the complainant was holding on to the cane knife. He did not say the complainant was swinging the knife towards him at that stage. The relevant parts of the interview are reproduced here.

Q 17: What happened next?

Ans: I told him to throw away his knife.

Q18. Did Mosese throw away his knife?

Ans: No, he didn't

Q19. Did you hit him with the *vaivai* stick?

Ans: Yes, I hit him with the stick so that his knife can fell off from his hand.

Q 20: How many times did you hit him with the stick?

Ans: I hit him five times with the *vaivai* stick. The fifth time I hit him he got cut on his head when he tried to stop it.

52. The evidence of the accused is that the laceration was self-inflicted when the complainant was trying to defend himself. (Ans to Q 20). The laceration was on the posterior scalp and not on the forehead. It is inconceivable that this injury to posterior scalp could be caused in the manner described by the accused. All his five (*vaivai*) strikes had landed on the cane knife the complainant was holding to defend. There was no explanation coming from the accused to account for the other injuries found on complainant's body. I reject the evidence of the defence. Even if the above quoted caution statement is relied upon, there is no factual basis for the accused to perceive a real threat so that he may be justified in exercising his right to self defence.

53. The Defence Counsel submitted in her closing that the burden is on the Defence to prove that the accused had a reasonable belief and that he had acted in self-defence. This not a correct statement of law. I have already discussed law relating to the Defence of self Defence and on whom the overall burden is.

54. I have rejected the evidence of the accused. With that, his evidence that the complainant was swinging a cane knife towards him also gets rejected. The complainant had taken the knife for farming purposes without having any knowledge of accused's presence at the farm. By the time the accused used the knife, the complainant had already been rendered unarmed. That was the evidence of the complainant. The accused himself admitted in his caution statement (quoted above) that the first thing he did was to hit the complainant with the stick so that his knife fell off from his hand. The swollen, tender R/O fracture in the left arm of the complainant further corroborates complainant's evidence that he had received a knock on the left hand. (Complainant said that he is a left hander). Although the complainant finally managed to get hold of a stone, after being hit on his head, he was not in a position to throw it at the accused as he was weak and therefore not posing any perceivable threat to the accused.

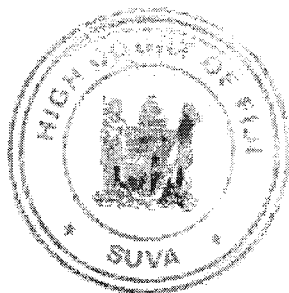
55. The Prosecution established beyond reasonable doubt that there was no factual basis for the accused perceiving that it was necessary for him to swing the cane knife at the complainant or to hit him with a stick to defend himself. In any event, it was not reasonable for him to respond the way he has responded considered in the context of reasonableness which in turn had to be determined by reference to the accused's perception of the threat that he faced.

56. The Prosecution proved the charge beyond reasonable doubt. I find the accused guilty of Act with Intent to Cause Grievous Harm.

57. The accused is convicted accordingly.



Aruna Aluthge  
Judge



3 August 2022

At Suva

Counsel:

- Office of the Director of Public Prosecution for State
- Legal Aid Commission for Defence